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Filing date: **09/22/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188903
Party	Plaintiff Apple Inc.
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Submission	Reply in Support of Motion
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Signature	/Alicia Grahm Jones/
Date	09/22/2010
Attachments	2010-9-22- Reply in Support of Opposer's Motion for Sanctions.pdf ( 4 pages ) (14027 bytes ) 2010-9-22- Third Declaration of A. Jones in Support of Opposer's Motion for Sanctions.pdf ( 3 pages )(12215 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/460,315

For the mark: APPLSTRUDL

Filed: April 29, 2008

Published: December 16, 2008

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APPLE INC.,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. 91188903
v.	:	
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
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**REPLY IN SUPPORT OF OPPOSER’S MOTION FOR  
SANCTIONS IN THE FORM OF DEFAULT JUDGMENT**

Opposer Apple Inc. (“Opposer”) respectfully submits this reply in support of its Motion for Sanctions in the Form of Default Judgment. Because Applicant Fabasoft AG (“Applicant”) has failed to comply with the Board’s June 28, 2010 Order or to file a response to Opposer’s Motion for Sanctions in the Form of Default Judgment, Opposer requests that the Board grant the Motion as conceded and enter default judgment against Applicant without further delay.

Opposer filed its Motion for Sanctions in the Form of Default Judgment on August 17, 2010, after Applicant failed to comply with the Board’s June 28, 2010 Order compelling Applicant to serve its Initial Disclosures and responses to Opposer’s outstanding discovery requests by July 25, 2010. *See* Dkt. No. 20. Applicant failed to file any response to Opposer’s Motion for Sanctions in the Form of Default Judgment before the September 7, 2010 deadline. *See* September 22, 2010 Third Declaration of Alicia Grahn Jones in Support of Opposer’s

Motion for Sanctions in the Form of Default Judgment (“Third Jones Decl.”). As of the date of this Reply, Applicant still has not filed any opposition. *Id.*

The Board may treat a motion as conceded where the non-moving party fails to file a brief in response. 27 C.F.R. § 2.127(a); *see also Amazon.com, Inc. v. Von Eric Lerner Kalaydjian*, Opposition No. 91122000, 2005 WL 3611776, at \*4 (T.T.A.B. Dec. 22, 2005) (finding opposer’s motion for sanctions conceded by applicant that did not file a brief in response); *Central Mfg. Inc. v Third Millennium Tech., Inc.*, 61 U.S.P.Q.2d 1210, 1211 (T.T.A.B. 2001) (finding opposer’s motion to dismiss conceded where applicant failed to respond); *Boston Chicken Inc. v. Boston Pizza Int’l Inc.*, 53 U.S.P.Q.2d 1053, 1054 (T.T.A.B. 1999) (granting petitioner’s motion for summary judgment on respondent’s counterclaims as conceded pursuant to Trademark Rule 2.127(a) because respondent failed to file a response). Because Applicant has failed to file a response brief, Opposer’s Motion for Sanctions should be deemed conceded.

In light of Applicant’s failure to comply with the Board’s June 28, 2010 Order and Applicant’s failure to file a brief in opposition to Opposer’s Motion for Sanctions, the Board should grant Opposer’s Motion and enter default judgment against Applicant.

This 22nd day of September, 2010.

**KILPATRICK STOCKTON LLP**

By: /s/ Alicia Grahm Jones

Joseph Petersen

Alicia Grahm Jones

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*Attorneys for Opposer Apple Inc.*

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	:	Opposition No. 91188903
v.	:	
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REPLY IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS IN THE FORM OF DEFAULT JUDGMENT has been served on Applicant by mailing a copy on September 22, 2010, via first-class mail, postage pre-paid, and addressed as follows:

Stewart J. Bellus  
Collard & Roe, P.C.  
1077 Northern Blvd  
Roslyn, NY 11576-1614

This the 22nd day of September, 2010.

/s/Allison M. Scott  
\_\_\_\_\_  
Allison M. Scott  
*Attorney for Opposer Apple Inc.*

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	:	
FABASOFT AG,	:	
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Applicant.	:	
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**THIRD DECLARATION OF ALICIA GRAHN JONES**  
**IN SUPPORT OF OPPOSER’S MOTION FOR SANCTIONS**  
**IN THE FORM OF DEFAULT JUDGMENT**

I, Alicia Grahn Jones, declare as follows:

1. I am an attorney at the law firm of Kilpatrick Stockton LLP and am one of the attorneys representing Apple Inc. (“Opposer”) in this action against Applicant Fabasoft AG (“Applicant”). I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge.
2. On August 17, 2010, Opposer filed its Motion and Memorandum in Support for Sanctions in the Form of Default Judgment.
3. Applicant’s deadline to file an opposition to Opposer’s Motion was September 7, 2010. To date, Applicant has not filed a brief in response to Opposer’s Motion and Memorandum in Support for Sanctions in the Form of Default Judgment.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: September 22, 2010

/s/ Alicia Grahm Jones  
Alicia Grahm Jones

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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	:	Opposition No. 91188903
v.	:	
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
-----X	X	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing THIRD DECLARATION OF ALICIA GRAHN JONES IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS IN THE FORM OF DEFAULT JUDGMENT has been served on Applicant by mailing a copy on September 22, 2010, via first-class mail, postage pre-paid, and addressed as follows:

Stewart J. Bellus  
Collard & Roe, P.C.  
1077 Northern Blvd  
Roslyn, NY 11576-1614

This the 22nd day of September, 2010.

/s/Allison M. Scott  
\_\_\_\_\_  
Allison M. Scott  
*Attorney for Opposer Apple Inc.*